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10/647,992

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/647,992
Filing Date: August 26, 2003
Appellant(s): SPITZER, SHAWN D.

MAILED

JUN 01 2007

GROUP 3600

Michael Goltry
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/26/07 appealing from the Office action
mailed 3/14/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

DES.365, 958	BOLEWSKI	1-1996
4,694,511	ESTES	9-1987

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takamatsu (4,036,524) in view of Bolewski (DES. 365,958). Takamatsu discloses the use of a seat (10) including a seat portion (11) and an attached seat back portion (12); a top (19), having a lower end, fitted over the seat back portion and a uniform bottom (17), having a rearward end, fitted over the seat portion; an engagement assembly (21a) carried by one of the lower end of the uniform top and the rearward end of the uniform bottom; a complementary engagement assembly (21b) carried by the other of the lower end of the uniform top and the rearward end of the uniform bottom; and the engagement assembly detachably engaged to the complementary engagement assembly detachably engaging the lower end of the uniform top to the rearward end of the uniform bottom, see figures 1-2. Takamatsu shows the use of all the teachings of the claimed invention but fails to show the use of a top and bottom supporting uniform adornment that

identifies a member of an organization. Bolewski teaches the use of a top and bottom supporting a uniform adornment that identifies a member of an organization, see figure 1. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the uniform top and bottom with adornment as taught by Bolewski, in order to identify the member of the organization.

Claims 3-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Takamatsu as applied to claim 1 above, and further in view of Estes (4,694,511). Takamatsu shows the use of all the claimed invention but fails to show the use of and arm openings on either side the neck openings. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the apparatus with arm openings as taught by Estes, in order for the occupant to wear the top.

(10) Response to Argument

The appellant argues that the markings applied to the seat cover of Bolewski does not meet the claim limitation of the first and second uniform adornments together forming the top and bottom as an identifying uniform of a member of an organization. Bolewski teaches this claim limitation because football, baseball, basketball, and hockey are forms of organizations. For example the NFL, MLB, NHL, and NBA.

Additionally, other organizations such as little league sport teams use more generic uniforms such as shown by Bolewski. It is a matter of design choice as to what the user prefers as to put on the cover. This choice does not effect the overall scope of the subject matter, neither is this choice critical or significant to the patentability of the

invention. The patentability is not directed to the design, but the utility, meaning the examination for patentability is directed toward a shirt usable on a seat cover not on the specific design of the seat cover.

Appellant states in specification on page 10 his invention is *"Top 21 and bottom 22 together represent a uniform or in other words an identifying outfit or style of dress worn by the members of a given group, whether a team, a profession, an organization, an establishment, etc. Exemplary of the many types of uniforms are those worn by members of amateur and professional sport teams such as basketball, football, baseball, soccer, hockey and softball teams, and those worn by members of military organizations such as the United States Army, Navy, Air Force and Marines, and various subgroups and organizations thereof, etc. Examples of other uniforms are those worn by chefs, the members of foreign military organizations, the members of past military organizations, etc. Still other groups, professions and organizations exist in which their members wear uniforms and this invention contemplates the top 21 and bottom 22 can be fashioned, styled and configured to represent any such uniform including any associated adornments, clothing styles, ornamentation and indicia, pockets, plackets, long sleeves, short sleeves, no sleeves, etc"*. The appellant admits to different uniforms being worn by team and organizations, thus suggesting variations including generic or broadly defined organizations. The Bolewski reference shows such shirt uniform being secured or combined with a chair that could include a name or logo of an organization. The lack of a specific design does not affect the utility of the

Art Unit: 3636

invention. Therefore, it is submitted that as broadly recited, the uniforms as taught by Bolewski are considered "an identifying uniform of a member of an organization".

The rejection of claims under 35 USC 103 should be sustained because Takamatsu, Bolewski and Estes teaches the use of every limitation as described above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Examiner Garrett 

3636

May 21, 2007

Conferees:

David Dunn 

Meredith Petravick 